

Brittan Construction Company and Northeastern Contracting Company and Patrick Joyce and Connecticut Laborers' Funds, Laborers' International Union of North America. Cases 34-CA-5186 and 34-CA-5303

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On April 22, 1992, the National Labor Relations Board issued an Order¹ in this case against the Respondent, Brittan Construction Company and Northeastern Contracting Company, in which the Board adopted, in the absence of exceptions, the findings, conclusions, and recommended Order of the administrative law judge. The Order directed the Respondent to pay all contractually required fringe benefit fund contributions which were not paid on behalf of employees as a result of the Respondent's unfair labor practices in violation of Section 8(a)(1) and (5) of the National Labor Relations Act. On November 27, 1992, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due through January 31, 1993,³ under the terms of the Board's Order, the Regional Director for Region 34 issued a compliance specification and notice of hearing on February 26. On March 24, the Respondent filed an answer to the compliance specification admitting all the allegations in paragraphs 1, 2, and 3. The Respondent denied the allegations in paragraph 4, which represent the calculation of the precise amounts owed by the Respondent to the fringe benefit funds, on the basis that it is "without information or knowledge sufficient to form a belief about the veracity of the allegations set forth" in paragraph 4.

On March 31, the General Counsel filed with the Board a Motion for Summary Judgment and for Issuance of Board Supplemental Decision and Order. The General Counsel argues that the calculations set forth in paragraph 4 are based on the specific hours worked by each represented employee since October 22, 1990, and that this information is peculiarly within the knowledge of the Respondent. The General Counsel contends that these calculations are pursuant to the ad-

mitted factual allegations of paragraphs 1, 2, and 3. The General Counsel argues that the Board should grant the Motion for Summary Judgment because the Respondent's answer does not satisfy the requirements of Section 102.56(b) of the Board's Rules and Regulations, which precludes the Respondent from generally denying matters that are within its knowledge.

On April 5, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. On April 19, the Respondent filed a response to the Notice to Show Cause and amended its answer in paragraph 4 of the compliance specification to admit that it owes \$53,732.75 to the fringe benefit funds, rather than \$58,145.28 contained in paragraph 4 of the specification. In its response, the Respondent maintains that on April 14 the Charging Party, Connecticut Laborers' Funds, informed the Respondent and the General Counsel that the \$58,145.28 figure was incorrect.

On April 26, the General Counsel filed a motion to amend the compliance specification to conform to the Respondent's amended answer. Thus, paragraph 4 of the amended specification alleges that the Respondent owes a total of \$53,732.75 to the various fringe benefit funds. The General Counsel contends that his Motion for Summary Judgment should be granted because the Respondent's amended answer admits all the allegations of the amended compliance specification.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Ruling on Motion for Summary Judgment

Although there was an error in the original calculation of the fringe benefit contributions owed by the Respondent, both the Respondent and the General Counsel agree with the corrected amount. Therefore, we accept the correction and grant the General Counsel's motion to amend the compliance specification.

We also grant the General Counsel's Motion for Summary Judgment because the Respondent's amended answer admits all the allegations of the compliance specification, as amended. Accordingly, we shall order that the Respondent pay the amounts set forth in paragraph 4 of the compliance specification, as amended.

¹ Not reported in Board volumes.

² The court's judgment was not published.

³ All dates are in 1993, unless stated otherwise.

ORDER

It is ordered that the General Counsel's motion to amend compliance specification is granted.

IT IS FURTHER ORDERED that the Respondent, Brittan Construction Company and Northeastern Contracting Company, Middletown, Connecticut, its officers, agents, successors, and assigns, shall pay to each of the funds the amounts set forth below opposite their names, plus any necessary additional amount as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979):

Connecticut Laborers' Health Fund	\$18,522.22
Connecticut Laborers' Pension Fund	14,457.75
Connecticut Laborers' Annuity Fund	18,313.16
New England Laborers' Training Fund	1,927.70

Connecticut Laborers' Legal Service
Fund

481.92

Dated, Washington, D.C. May 27, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD